

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Utility Audit Company, Inc.,

Complainant,

vs.

San Diego Gas and Electric Company,

Defendant.

Case 02-03-028
(Filed March 20, 2002)

**SCOPING MEMO AND JOINT RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE**

Pursuant to Rules 6(b)(3) and 6.3 of the Rules of Practice and Procedure, this ruling sets forth a procedural schedule, assigns a presiding officer and addresses the scope of the proceeding following a prehearing conference (PHC) held on June 7, 2002, by Administrative Law Judge (ALJ) Sullivan.

Background

Utility Audit Company, Inc. (UAC) and the San Diego Gas and Electric Company (SDG&E) are engaged in a dispute over the billing of natural gas for a customer located at 820 West G Street.

UAC alleges, among other things: 1) that SDG&E improperly billed the customer by providing an insufficient baseline allowance; 2) that this incorrect billing resulted in overcharges and a billing error; 3) that SDG&E refuses to grant a refund; and 4) that this violates the Public Utilities Code.

SDG&E's answer alleges, among other things: 1) that SDG&E billed the account correctly; 2) that the customer knew, or reasonably should have known, the number of units on the premises and the number of units for which SDG&E has made baseline allowances, and that a long-standing failure to correct inconsistencies bars recovery; 3) that under tariff rule 18, UAC is not eligible for a refund; 4) that UAC has not alleged that it is authorized by the customer to pursue the complaint, and therefore it lacks standing; 5) that UAC has failed to attempt to resolve the matter through informal complaint resolution channels; 6) that UAC has failed to allege facts that demonstrate that SDG&E has charged an unlawful rate; and 7) that UAC has failed to comply with Rule 10, which requires that the complainant completely advise the defendant and the Commission of the grounds of the complaint, the injury complained of, and the relief requested.

Scope of Proceeding

Based on the pleadings to date and the representations of the parties at the PHC, the dispute is whether SDG&E has provided gas service consistent with its tariffs and whether the customer is due a refund. At this point, it is unclear the extent to which there are disputed facts.

Parties should limit their testimony at the evidentiary hearings to matters involving disputed issues of fact. Testimony that presents legal or policy argument may be stricken. Parties will have an opportunity to address matters of law and policy in briefs. If there are no disputed facts, then we will remove the evidentiary hearings from the calendar.

Discovery

As mentioned at the PHC, discovery has commenced and may continue until one week following the reply testimony (August 23). Parties may make

reasonable discovery requests and recipients should strive to comply with them, both in a timely fashion. Any discovery disputes which the parties cannot resolve between themselves, after good faith efforts to meet and confer, may be brought to ALJ Sullivan, who may rule himself or refer the dispute to the Commission's Law and Motion ALJ. The Commission generally looks to the Code of Civil Procedure for guidance in resolving discovery disputes.

Schedule

The schedule for this proceeding is as follows:

June 7, 2002	Discovery commences
July 15, 2002	Opening Testimony (served)
August 16, 2002	Reply Testimony (served)
August 23, 2002	Discover concludes
September 4 at 9:30 a.m.	Evidentiary Hearings Public Utilities Commission Courtroom San Francisco
September 16, 2002	Concurrent briefs filed and served
September 30 2002	Concurrent reply briefs filed and served, whereupon the case is submitted
....	Presiding officer's decision filed within 60 days of submission
....	Presiding officer's decision becomes effective 30 days after mailing (unless appeal filed per Pub. Util. Code § 1701.2(a) and Rule 8.2.)

The evidentiary hearings will commence at 9:30 a.m. on September 4, 2002 at the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California. The parties may make short opening remarks at the opening of the evidentiary hearing, focusing on the critical facts that the upcoming testimony will demonstrate. Prepared written testimony shall be served on parties and on the ALJ.

The briefing schedule, which is set in the table above, may be reconsidered at the evidentiary hearings. This proceeding shall be resolved within the twelve-month timeframe set for the resolution of adjudicatory proceedings.

Pre-Hearing Meet and Confer

No later than 10:00 a.m. on August 30, 2002, the parties are to meet by phone or otherwise to discuss the following:

1. Issues to be addressed in the hearing, and specifically, whether any issues have been narrowed or amended since the filing of the complaint;
2. Proposed witness schedule;
3. Cross-examination time estimates; and
4. Exhibit Lists. Each exhibit list shall contain the name of the offering party and/or sponsoring witness. Each party is to exchange its exhibit list with the other party participating in the hearing. The exhibit list for the hearing should also include the nature of any objection to admission of an exhibit by any part or the statement of "no objection." An annotated exhibit list should be included in summary filing described below.

All exhibits shall be pre-marked for identification. UAC will use 1-99 and SDG&E 100-199. Further requirements with respect to exhibits are set forth in Appendix B.

Following the August 30th meeting, UAC shall prepare a joint filing summarizing the above information. Both parties shall sign and make the filing by noon on September 4, 2002. In addition, UAC shall e-mail a copy to ALJ Sullivan [tjs@cpuc.ca.gov] by noon on August 30, 2002. If there are no disputed matters of fact, parties should so indicate and we will remove evidentiary hearings from the calendar.

Category of Proceeding and Need for Hearing

This ruling confirms this case as an adjudication scheduled for hearing, as preliminarily determined in the Instructions to Answer. If, however, there are no disputed facts, we will remove evidentiary hearings from the Commission calendar.

Assignment of Presiding Officer

ALJ Timothy J. Sullivan will be the presiding officer.

Ex Parte Rules

Ex parte communications are prohibited in adjudicatory proceedings under Pub. Util. Codes § 1701.2(b) and Rule 7.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is as set forth herein.
3. The presiding officer will be Administrative Law Judge (ALJ)

Timothy J. Sullivan.

4. This ruling confirms that this proceeding is an adjudication scheduled for hearing.

5. Ex parte communications are prohibited under Pub. Util. Code § 1701.2(b) and Rule 7 of the Commission's Rules of Practice and Procedure.

6. The official service list as of this date is attached to this ruling as Appendix A. All submission shall be served on those on the current service list as well as on the Assigned Commissioner and Assigned ALJ. Submission to the service list shall be provided by hard copy. Service to the Assigned ALJ should also be provided by e-mail (tjs@cpuc.ca.gov).

7. Appendix B contains directions concerning the preparation and identification of exhibits. Parties shall follow these directions.

June 12, 2002, at San Francisco, California.

/s/ GEOFFREY BROWN

Geoffrey Brown
Assigned Commissioner

/s/ TIMOTHY J. SULLIVAN

Timothy J. Sullivan
Administrative Law Judge

APPENDIX A

SERVICE LIST

<p>***** APPEARANCES *****</p> <p>Michael A. Cartelli Attorney At Law LAW OFFICES OF MICHAEL A. CARTELLI 30 N. RAYMOND AVENUE, SUITE 414 PASADENA CA 91103 (626) 577-3415 mcart108@earthlink.net For: SDG&E</p>	<p>***** INFORMATION ONLY *****</p> <p>Monica Wiggins SAN DIEGO GAS & ELECTRIC COMPANY PO BOX 1831 101 ASH ST., HQ 14-A SAN DIEGO CA 92112 (619) 696-4056 mwiggins@sdge.com</p>
<p>Patrick J. Power Attorney At Law 1300 CLAY STREET, SUITE 600 OAKLAND CA 94612 (510) 446-7742 pjpowerlaw@aol.com For: Utility Audit Co., Inc.</p>	<p>Sid Newson Tariff Administrator SOUTHERN CALIFORNIA GAS COMPANY 555 WEST FIFTH STREET, 14D6 LOS ANGELES CA 90013</p>
<p>***** STATE EMPLOYEE *****</p> <p>Maria E. Stevens Executive Division RM. 500 320 WEST 4TH STREET SUITE 500 Los Angeles CA 90013 (213) 576-7012 mer@cpuc.ca.gov</p>	<p>John Mcdonald President UTILITY AUDIT CO., INC. 603 SEAGAZE DR., SUITE 531 OCEANSIDE CA 92054 (760) 720-7188</p>
<p>Timothy J. Sullivan Administrative Law Judge Division RM. 5007 505 VAN NESS AVE San Francisco CA 94102 (415) 703-1463 tjs@cpuc.ca.gov</p>	

(END OF APPENDIX A)

APPENDIX B

DIRECTIONS IN THE PREPARATION AND IDENTIFICATION OF EXHIBITS

EXHIBITS

Service of Exhibits

All prepared written testimony shall be served on all appearances and state service on the service list, as well as on the Assigned Commissioner's office and on the Assigned ALJ. Do NOT file prepared written testimony with the Commission's Docket Office. (Such testimony becomes part of the record only after it is admitted into evidence.)

Identification of Exhibits in the Hearing Room

Each party sponsoring an exhibit shall, in the hearing room, provide **two copies to the ALJ and one to the court reporter**, and have at least 5 copies available for distribution to parties present in the hearing room. **The upper right hand corner of the exhibit cover sheet shall be blank for the ALJ's exhibit stamp.** Please note that this directive applies to cross-examination exhibits as well. If there is not sufficient room in the upper right hand corner for an exhibit stamp, please prepare a cover sheet for the cross-examination exhibit.

Cross-examination With Exhibits

As a general rule, if a party intends to introduce an exhibit in the course of cross-examination, the party should provide a copy of the exhibit to the witness and the witness' counsel before the witness takes the stand on the day the exhibit is to be introduced. Generally, a party is not required to give the witness an advance copy of the document if it is to be used for purposes of impeachment or to obtain the witness' spontaneous reaction. An exception might exist if parties have otherwise agreed to prior disclosure, such as in the case of confidential documents.

Corrections to Exhibits

Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. Corrections should be made in a timely manner by providing new exhibit pages on which corrections appear. The original text to be deleted should be lined out with the substitute or added text shown above or inserted. Each correction page should be marked with the word "revised" and the revision date.

Exhibit corrections will receive the same number as the original exhibit plus a letter to identify the correction. Corrections of exhibits with multiple sponsors will also be identified by chapter number. For example, Exhibit 5-3-B is the second correction made to Chapter 3 of Exhibit 5.

**(END OF APPENDIX B)
CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Scoping Memo and Joint Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated June 12, 2002, at San Francisco, California.

/s/ ERLINDA PULMANO
Erlinda Pulmano

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.